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**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

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	:	Chapter 11
In re	:	
	:	
REFCO INC., et al.,	:	Case No. 05-60006 (RDD)
	:	
Debtors.	:	Jointly Administered
	::	
-----	X	
AXIS REINSURANCE COMPANY,	:	Adv. Proc. No. 07-01712 RDD
	:	
Plaintiff,	:	
	:	
v.	:	<i>Electronically Filed</i>
	:	
PHILLIP R. BENNETT, et al.,	:	
	:	
Defendants.	::	
-----	X	
TONE N. GRANT, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Adv. Proc. No. 07-2005-rdd
	:	
AXIS REINSURANCE COMPANY,	:	
	:	
Defendant.	:	
-----	X	

-----	X	
LEO R. BREITMAN, et al.,	:	
	:	
Plaintiffs,	:	
v.	:	Adv. Proc. No. 07-2032-rdd
	:	
AXIS REINSURANCE COMPANY,	:	
	:	
Defendant.	::	
-----	X	

**APPELLEE INSUREDS KLEJNA, SEXTON, SHERER
AND SILVERMAN’S COUNTER-DESIGNATION OF THE
RECORD AND COUNTER-STATEMENT OF THE ISSUE ON
APPEAL IN RESPONSE TO APPELLANT AXIS REINSURANCE
COMPANY’S DESIGNATION OF ITEMS IN THE RECORD
ON APPEAL AND ITS STATEMENT OF THE ISSUE PRESENTED**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Counterclaim-Plaintiff Appellees Dennis Klejna, William M. Sexton, Gerald Sherer and Philip Silverman (collectively, “Appellee Insureds”) hereby submit the following counter-designation of additional items to be included in the record on appeal and counter-statement of the issue on appeal in connection with the appeal of Axis Reinsurance Company (“Axis”) from the Order of the United States Bankruptcy Court for the Southern District of New York, dated October 19, 2007, and as amended by the Errata Order entered October 22, 2007, granting the motion of the Appellee Insureds for summary judgment to require Axis to advance defense costs in the underlying actions.

COUNTER-DESIGNATION OF THE RECORD ON APPEAL

Appellee Insureds hereby counter-designate the following items, annexed hereto as exhibits numbered 1 through 16, to be included in the record on appeal:

<u>Exhibit No.</u>	<u>Docket No.</u> ¹	<u>Description</u>
1	1, Ex. C	Directors and Officers Insurance and Company Reimbursement Policy No. 1620924 issued to Refco LLC by Lexington Insurance Company for the period August 11, 2005 to August 11, 2006.
2	--	Order, dated March 27, 2006, in <u>In re Refco, Inc.</u> , No. 05-60006 (RDD) (Bankr. S.D.N.Y.), granting the motion of U.S. Specialty Insurance Company for relief from the automatic stay to advance and/or pay defense costs under directors and officers liability policy.
3	--	Letter, dated April 25, 2007, from Leslie S. Ahari at Ross, Dixon & Bell, LLP, counsel for U.S. Specialty Insurance Company, to Luc A. Despins and Dennis C. O'Donnell at Millbank, Tweed, Hadley & McCloy, LLP.
4	--	Order, dated May 4, 2007, in <u>In re Refco, Inc.</u> , No. 05-60006 (RDD) (Bankr. S.D.N.Y.), granting the motion of Lexington Insurance Company for relief from the automatic stay to advance and/or pay defense costs under directors and officers liability policy.
5	10	Answer and Counterclaims of Defendants Dennis A. Klejna and Joseph Murphy, dated July 12, 2007, in the instant adversary proceeding.
6	--	Order, dated August 3, 2007, in <u>Murphy v. Lexington Insurance Co.</u> , No. L-5004-06 (N.J. Super. Ct.), granting summary judgment in favor of plaintiff insureds Joseph Murphy and Dennis Klejna, and against Lexington Insurance Company.

¹ The "Docket No." entries correspond to the numbers set forth in the docket for the instant case on appeal, Axis Reinsurance Company v. Bennett, Adv. Proc. No. 07-01712-rdd (Bankr. S.D.N.Y.).

<u>Exhibit No.</u>	<u>Docket No.</u> ¹	<u>Description</u>
7	--	Letter, dated August 8, 2007 from James E. Tolan at D'Amato & Lynch, counsel for Lexington Insurance Company, to Luc A. Despins and Dennis C. O'Donnell at Millbank, Tweed, Hadley & McCloy, LLP.
8	39	Affidavit of Steven Kane, dated August 13, 2007, in Support of Axis' Memorandum in Opposition to Defendants' Application for a Preliminary Injunction Ordering Advancement of Defense Costs in the instant adversary proceeding (including exhibits).
9	47	Answer of Axis Reinsurance Company to Defendants William M. Sexton and Gerald Sherer's Counterclaims, dated August 16, 2007, in the instant adversary proceeding.
10	48	Answer of Axis Reinsurance Company to Defendant Philip Silverman's Counterclaims, dated August 16, 2007, in the instant adversary proceeding.
11	54	Answer of Axis Reinsurance Company to Defendants Dennis A. Klejna and Joseph Murphy's Counterclaims, dated August 23, 2007, in the instant adversary proceeding.

<u>Exhibit No.</u>	<u>Docket No.</u> ¹	<u>Description</u>
12	61	Declaration of Kenny Li, dated August 24, 2007, in Further Support of the Motion by Dennis A. Klejna, Joseph Murphy, William M. Sexton, Gerald Sherer, and Philip Silverman for Preliminary Injunctive Relief to Compel Axis to Advance Defense Costs in the instant adversary proceeding (including exhibits).
13	85	Motion by Dennis A. Klejna, William Sexton, Gerald Sherer, and Philip Silverman for Summary Judgment to Require Axis to Advance Defense Costs, dated September 25, 2007, in the instant adversary proceeding (including the attached Local Rule 7056.1 Statement of Undisputed Material Facts in Support of the Motion by Dennis A. Klejna, William Sexton, Gerald Sherer, and Philip Silverman for Summary Judgment to Require Axis to Advance Defense Costs).
14	99	Stipulation, signed on October 1, 2007, consolidating adversary proceedings and granting related relief in the instant adversary proceeding.
15	117	Letter, dated October 11, 2007, from Ivan Kline at Friedman & Wittenstein to Judge Robert D. Drain in the instant action regarding the decision in <u>Carlin Equities Corp. v. Houston Casualty Co.</u>
16	127	Errata Order, dated October 22, 2007, in the instant action.

COUNTER-STATEMENT OF THE ISSUE PRESENTED ON APPEAL

Appellee Insureds hereby submit the following counter-statement of the issue presented on appeal:

Whether the Bankruptcy Court erred in granting the Appellee Insureds' motion for summary judgment to require excess insurance carrier Axis to advance defense costs in the underlying actions, where it is undisputed that defense costs are covered under the Axis Policy and that the underlying actions fall within the definition of "Claims" that are covered by the Axis Policy, and the Primary Policy, to which the Axis Policy follows form, expressly requires the carrier to advance defense costs "as incurred," unless and until there is a final determination that such costs are not covered.

Dated: November 2, 2007
New York, New York

Respectfully submitted,

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